



Report to the Auburn City Council

Action Item

Agenda Item No. **7**

[Signature]
City Manager's Approval

To: Honorable Mayor and City Council Members
From: Robert Richardson, City Manager
Andy Heath, Administrative Services Director
Date: April 23, 2012
Subject: Airport Land Lease Assignment, Option, and Commercial Office Lease –
Emery C. Oxley Jr. and Linda L. Oxley, Trustees

The Issue

Shall the City Council consent to the assignment of an existing lease to a family trust, the granting of an option to said lease for future development at the Auburn Airport; and approve a commercial office lease for a business-related use of city-owned buildings for Emery C. Oxley Jr. and Linda L. Oxley, Trustees?

Conclusions and Recommendations

By **RESOLUTION**, authorize the City Manager or his designee to:

1. Approve the assignment and assumption of the land lease between the City of Auburn and Emery C. Oxley Jr. and Linda L. Oxley to Emery C. Oxley and Linda L. Oxley, as trustees of the Oxley Family Trust, dated June 10, 2005;
2. Approve an option granted to Emery C. Oxley and Linda L. Oxley to lease certain defined property within the Auburn Airport with the intention of developing the option area within the next five to eight years; and
3. Approve a Commercial Office lease between the City of Auburn and Emery C. Oxley Jr. and Linda L. Oxley, as trustees of the Oxley Family Trust for a period of ten years unless explicitly terminated upon exercise of an approved option.

Background

On December 16, 1991, the City Council adopted Resolution No. 91-195, approving a land lease with Emery C. Oxley Jr. for a portion of Lot 24 and Airport property located at the northern end of what is now New Airport Road. The lease, which was executed for a period of 50-years, comprised approximately one acre of land and allowed for the commercial use of the city-owned "Avionics" building and the "Gyro House".

On June 25, 2001, the City Council adopted Resolution Nos. 01-71 and 01-72, approving a two-year lease option between the City of Auburn and Emery C. Oxley and Linda L. Oxley and amending the December 1991, respectively. These actions were taken at the request of the City which, at the time, was desirous of constructing an airport terminal on, or in the vicinity of, Mr. Oxley's leased premises. Action taken pursuant to the aforementioned resolutions essentially deleted the legal description provided in the original lease, providing the City with the ability to freely develop unencumbered land.

In exchange for providing the City with land for the land it sought for potential development, the option and amendment resolutions allowed Mr. Oxley to lease a commensurate area of land in the eastern area of the Airport once it became available, while allowing him to continue using the "Avionics" building and "Gyro House" until the option was fully exercised. Ultimately, the City never developed the original leased area and the option was never exercised. Mr. Oxley, to this day, continues to pay rent for use of the "Avionics" building and "Gyro House".

Analysis

Updated Lease Option

Over the course of the last year, staff has been negotiating with Mr. Oxley to facilitate a viable option alternative – updating the expired "swap" option previously agreed to by the City and Mr. Oxley. Staff recommends providing Mr. Oxley with a new option due to the inability to exercise the original option and Mr. Oxley's desire to improve an undeveloped and/or underdeveloped area of the Airport. Terms of the new option, defined by the legal description provided in Exhibit A as approximately one acre of land in the recently annexed eastern area of the Airport, are recommended as follows:

- Lease option period of five (5) years unless the City elects to not install utilities in the annexed area, at which point the option is extended to eight (8) years (providing the optionee additional time to install utilities).
- Lease rate, upon exercise of option, will be \$0.153 per square foot / year, as referenced and updated in original lease.
- The original lease will be extended by ten (10) years, expiring on 01/01/2052.
- Mr. Oxley will be allowed to continue using the "Avionics" building and the "Gyro House" pursuant to an executed Commercial Office Lease recommended herein.

Original Lease Assignment

As a means to facilitate the assignment of the original lease to a family trust, Mr. Oxley has requested the City's consent to assign the leasehold interest from Emery C. Oxley Jr. and Linda L. Oxley to Emery C. Oxley Jr. and Linda L. Oxley as trustees of the Oxley Family Trust, dated June 10, 2005. In addition to approving the assignment, staff recommends the City consent to the execution of any related documents including the recording, by the Placer County Recorder's Office, of a memorandum of lease for the affected parcel, if necessary.

Commercial Office Lease

As previously mentioned, Mr. Oxley desires to continue using the "Avionics" building and the "Gyro House", located in the former lease area at 13615 New Airport Road. The commercial office lease shall be in effect for a period of ten (10) years, unless terminated earlier consistent with Section 1 of the Option to Lease Agreement previously discussed. The fixed rent for the two buildings will continue to be \$996.21 per month.

Alternatives Available to Council; Implications of Alternatives

1. Adopt a resolution authorizing the City Manager or his designee to approve the assignment of an existing lease to a family trust, the granting of an option to said lease for future development at the Auburn Airport; and approve a commercial office lease for a business-related use of city-owned buildings for Emery C. Oxley Jr. and Linda L. Oxley, Trustees.
2. Do not adopt a resolution and direct staff accordingly.

Fiscal Impact

None. The monthly rent amount of \$996.21 currently paid by Emery C. Oxley Jr. and Linda L. Oxley for use of the "Avionics" building and the "Gyro House" will remain unchanged pursuant to the recommended Commercial Office Lease.

Upon exercise of the recommended option, the lease rate for the option area will be no less than \$6,597.97 annually

Exhibit A – Option to Lease

Exhibit B – Assignment of Original Lease

Exhibit C – Commercial Office Lease – 13615 New Airport Road

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RESOLUTION NO. 12-
RESOLUTION APPROVING LEASE ACTIONS FOR EMERY C. OXLEY AND LINDA
L. OXLEY AT THE AUBURN MUNICIPAL AIRPORT

THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

That the City Council of the City of Auburn does hereby authorize the
City Manager or his designee to:

1. Approve the assignment and assumption of the Land Lease between the
City of Auburn and Emery C. Oxley Jr. and Linda L. Oxley to Emery C.
Oxley Jr. and Linda L. Oxley, as trustees of the Oxley Family Trust,
dated June 10, 2005;
2. Approve an option granted to Emery C. Oxley and Linda L. Oxley to
lease certain defined property within the Auburn Airport with the
intention of developing the option area within the next five to eight
years; and
3. Approve a Commercial Office lease between the City of Auburn and
Emery C. Oxley Jr. and Linda L. Oxley, as trustees of the Oxley Family
Trust for a period of ten years unless explicitly terminated upon exercise
of approved option.

DATED: April 23, 2012

Keith Nesbitt, Mayor

ATTEST:

Joseph G. R. Labrie, City Clerk

I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby
certify that the foregoing resolution was duly passed at a regular meeting of

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the City Council of the City of Auburn held on the 23rd day of April 2012 by the following vote on roll call:

Ayes:
Noes:
Absent:

Joseph G. R. Labrie, City Clerk

OPTION TO LEASE

This OPTION TO LEASE ("Option") is made as of _____, 2011, by and between the City of Auburn, a municipal corporation ("City"), and Emery C. Oxley, Jr. and Linda L. Oxley, trustees of the Oxley Family Trust dated June 10, 2005 ("Optionee").

RECITALS

WHEREAS, City and Emery C. Oxley, Jr. and Linda L. Oxley ("Oxley") are parties to that certain lease for a portion of Lot 24 and Airport property dated January 1, 1992, approved by Resolution #91-195 dated December 16, 1991, as such lease was amended as of June 25, 2001, approved by Resolutions #01-71 and 01-72, dated June 25, 2001 (as amended, the "Lease"). Capitalized terms when used herein shall have the meanings ascribed to them in the Lease unless expressly defined otherwise herein.

WHEREAS, concurrently herewith, Optionee and City shall enter into a new commercial office rental agreement for the lease of the Gyro House and the Avionics buildings with Optionee as the "Lessee" for a rent and a term as provided therein.

WHEREAS, City desires to grant an option to Optionee as provided herein in order to allow Optionee to expand its operations at the Airport, and to allow construction of certain improvements as provided below during the term of the Lease.

AGREEMENT

1. Option. City hereby grants to Lessee an option (the "Option") to lease certain property within the Airport as depicted on Exhibit A (the "Option Premises"). The Option Premises are not adjacent to the premises leased under the Lease (the "Leased Premises"). If Lessee exercises the Option, it is Lessee's intention to develop the Option Premises, to continue to occupy the Leased Premises while the Option Premises are being developed, and then to utilize the Option Premises for Lessee's operations; Optionee may, at its sole election, thereafter elect to terminate its lease of the Gyro House and the Avionics building without penalty.

a. Option Term. The term of the Option shall be from the date hereof until the fifth (5th) anniversary of the date hereof, unless further extended as provided in the following paragraph.

b. Extension of Option Term. The Option Premises is unimproved real property without utility service. Prior to Lessee's exercise of the Option, City may, but is under no obligation to, construct and install utilities to the boundary of the Option Premises. The utilities required in order to develop the Option Premises as required herein include water, electrical, gas and sewer. If City elects not to install utilities to the boundary of the Option Premises, Lessee may extend the term of the Option for an

additional three (3) years, for a total Option period of eight (8) years, in order to allow Lessee the ability to install the utilities to the Option Premises.

c. Lease Terms upon Exercise of the Option. If Lessee exercises the Option, City and Lessee agree to enter into a lease (the "New Lease") substantially similar to the Lease, except that the Leased Premises shall be the Option Premises and the Rent shall be as provided herein. The term of the New Lease shall be the remainder of the Term of the Lease at the time the New Lease is executed, extended by ten (10) years. At such time as the City issues a certificate of occupancy for the Improvements on the Option Premises, the existing Lease shall be terminated. Rent for the Option Premises shall commence upon [e.g., issuance of a certificate of occupancy for the improvements on the Option Premises], and shall be in an amount equal to the square footage of the Option Premises (_____ square feet) times \$0.1530 per square foot. All other terms and conditions of the Lease shall remain unchanged and in full force and effect.

d. Exercise of the Option. Provided that Lessee is not then in default under the Lease, Lessee may exercise the Option at any time during the term of the Option by delivering to City written notice of exercise of Option not more than [120] days, and not less than [60] days, prior to the proposed effective date of the Option of Lease. The Option may not be exercised later than 120 days prior to the expiration of the Option term.

e. Survey. Upon exercise of this Option, City agrees to contract for a survey and legal description of the Option Premises at City expense.

f. Lessee Improvements. If Optionee exercises the Option, Optionee, at Optionee's sole cost and expense, shall design, finance and construct commercial space on the Optioned Premises (herein "Improvements"). Design of the Improvements shall be prepared by an architect or engineer licensed by the State of California and subject to review and approval by the City Manager. Construction of the Improvements shall be performed by a contractor and/or sub-contractors licensed by the State of California.

i. City shall promptly cooperate and reasonably approve the design of the aforesaid Improvements within a reasonable time not to exceed sixty (60) days of Optionee's submittal of same to City. The scope of City's approval shall contemplate aesthetic design, as well as the overall functionality of the improvements in relation to the Airport site plan, when current and future airport uses are considered as a whole. City's approval shall not unreasonably be withheld, delayed or conditioned. Within the meaning of this paragraph, City's approval shall neither mean nor include that approval required to be obtained for new construction from the City Building Department, or otherwise, but rather is intended to mean acceptance by the City Manager of the design and functionality of the Improvements, and of the Airport usages, when taken as a whole.

ii. Optionee shall secure, and maintain in full force and effect during the course of construction, any and all certificates, permits and approvals necessary for the construction of the Improvements that may be required by any federal, state, municipal or local authority, as well as satisfactory soil boring tests (herein "Approvals

and Tests"). City shall cooperate with Optionee in its efforts to obtain such Approvals and Tests and shall take no action that would adversely affect the status of the subject real property with respect to the proposed use by Optionee. In the event any of the aforesaid Approvals and Tests shall for any reason be unsatisfactory to Optionee, including but not limited to cancellation, lapse, or termination of such Approvals, then in that event, Optionee may terminate this Lease with ninety (90) days notice in writing to City.

iii. Optionee shall commence construction of the Improvements within [180] days after the date that Optionee exercises the Option (the "Commencement Date"), and thereafter shall diligently prosecute such construction to completion, or otherwise be in material breach hereof. All construction shall be completed by the [first anniversary] of the Commencement Date.

iv. At all times during the construction of Improvements, Optionee and Optionee's contractors shall comply with the licensing and permit requirements of any and all federal, state, municipal or local authorities, and shall at all times comply with all federal, state, municipal or local statutes, ordinances, laws, rules, regulations and guidelines. Optionee shall comply with all FAA requirements as more specifically set forth in Exhibit "C", attached hereto and incorporated herein by reference.

v. In the event of Optionee's default during the construction of the aforesaid Improvements, City shall have the right, but not the obligation, to assume Optionee's obligations and rights under any contract related to, or for any portion of, the construction of the aforesaid Improvements.

vi. Optionee will defend and indemnify City against all loss, claims, costs, damage, expense, and liability, arising out of, or connected with the work of improvement.

vii. At all time during the construction of Improvements, Optionee shall defend, indemnify and hold harmless City from any injury to persons, including death, or from any damage to property, arising out of construction activities undertaken by Optionee pursuant to this Lease.

viii. Optionee shall promptly commence, diligently pursue to completion the construction of the aforesaid Improvements, and cause to be filed a notice of completion for such improvements on or before the first anniversary of the Commencement Date. Optionee's failure to timely complete the construction of the aforesaid Improvements shall be a material breach of this Lease.

ix. All improvements constructed on the Premises by Optionee shall be owned by Optionee until expiration of the term of this Lease or earlier termination hereof. Except as otherwise provided in the Lease, all improvements made by or for Optionee, whether temporary or permanent in character, shall automatically at the end of the term of the Lease, whether by expiration or by earlier termination, become the property of City, and shall be surrendered to City in good condition, reasonable use, wear

and tear excepted, without compensation to Optionee and without further instrument of transfer. Provided further, that upon such expiration or termination, and upon written request by City, Optionee shall deliver to City a quit claim deed or such other instrument of transfer which shall be duly and properly executed and acknowledged, and which shall be adequate for the intended purpose.

x. Once construction of the Improvements is completed, Optionee shall not remove, dismantle, demolish or otherwise destroy said improvements without City's prior written consent. If Optionee shall so remove, dismantle, demolish or otherwise destroy said improvements without City's prior written consent, Optionee shall be obligated to City for the cost of reconstruction, which cost shall include site restoration cost.

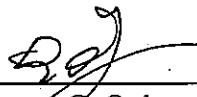
xi. City shall be wholly responsible for the removal, amelioration and/or remediation of any and all latent contamination, toxic substances, or hazardous materials (as that term is defined by the Placer County Department of Public Works) previously existing or newly discovered on the Premises during the course of Optionee's installation of the aforesaid Improvements.

xii. Optionee shall be wholly responsible for the removal, amelioration and/or remediation of any and all contamination, toxic substances, or hazardous materials which have been deposited upon the Premises during the course of Optionee's installation of the aforesaid Improvements, or otherwise as a result of Optionee's activities on or in relation to the Premises.


2. Effect of Option. Except as expressly amended by this Option, the terms and conditions of the Lease shall remain unchanged and the Lease shall continue in full force and effect.

This Option to Lease is executed as of the date first set forth above.

"Optionee"



Emery C. Oxley, Jr., as trustee of the
Oxley Family Trust dated June 10,
2005



Linda L. Oxley, as trustee of the Oxley
Family Trust dated June 10, 2005

Approved as to Form

Michael Colantuono, City Attorney

"CITY"

City of Auburn, California, a
municipal corporation

By: Robert Richardson
City Manager

EXHIBIT A

DEPICTION OF THE OPTION PREMISES

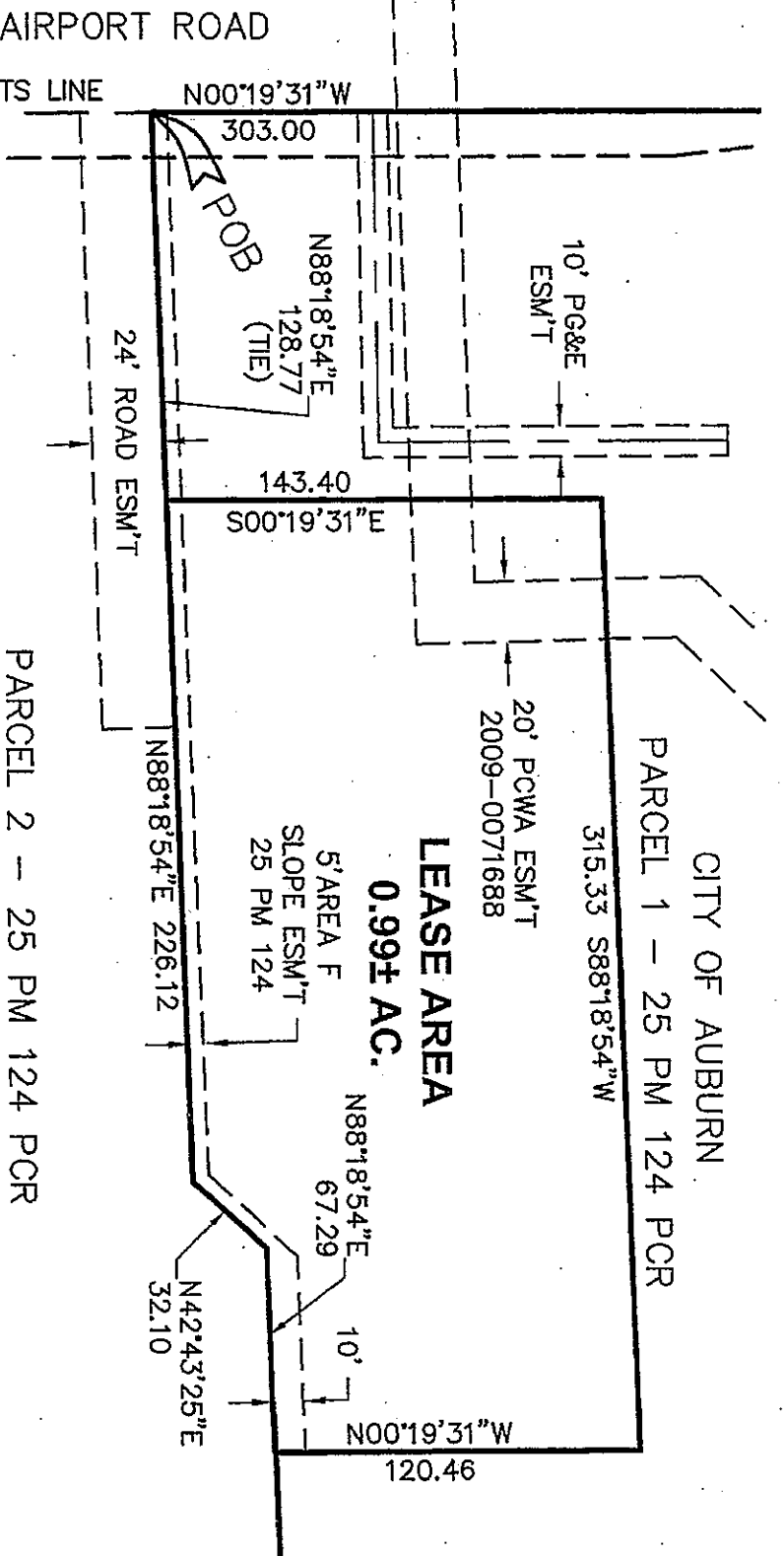
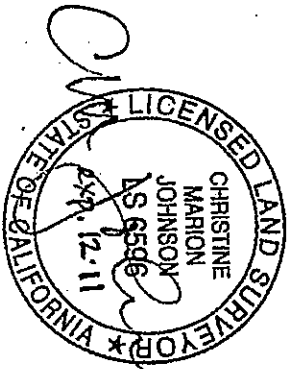
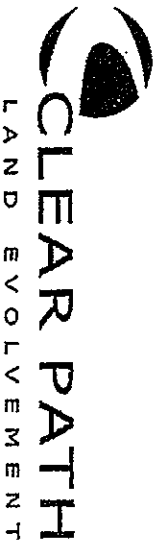


EXHIBIT B
LEASE AGREEMENT
CITY OF AUBURN TO OXLEY
RESOLUTION NO. _____
 A PORTION OF SECTION 27, T.13 N., R.08 E., M.D.M.
 CITY OF AUBURN, PLACER COUNTY, CALIFORNIA
 SCALE: 1" = 60' JUNE 2011

June 9, 2011

Exhibit "A"
Lease Description
City of Auburn to Oxley
Resolution No. _____

A portion of the tract of land shown and designated as Parcel 1 on Parcel Map No. 75040 filed in Book 25 of Parcel Maps at Page 124, Placer County Records, located in Section 27, Township 13 North, Range 08 East, M.D.M., Placer County, California.

Beginning at a point on the Southerly line of the above described Parcel 1, and from said point the Southwest corner of said Parcel 1 bears South 88°18'54" West along said Southerly line for a distance of 128.77 feet; thence from the point of beginning, leaving said Southerly line North 00°19'31" West for a distance of 143.40 feet; thence North 88°18'54" East for a distance of 315.33 feet; thence South 00°19'31" East for a distance of 120.46 feet to a point on said Southerly line of Parcel 1; thence along said Southerly line the following three (3) consecutive courses and distances: (1) South 88°18'54" West for a distance of 67.29 feet; (2) South 42°43'25" West for a distance of 32.10 feet; and (3) South 88°18'54" West for a distance of 226.12 feet to the point of beginning.

Containing 0.99 acres, more or less.



Oxley 6-9-11 lease.doc

ASSIGNMENT OF LEASE WITH CONSENT
(AUBURN MUNICIPAL AIRPORT)

This Assignment of Lease with Consent ("**Assignment**") dated as of _____, 2012 (the "**Effective Date**") is made and entered into for good and valuable consideration by and between Emery C. Oxley Jr. and Linda L. Oxley ("**Assignor**") and Emery C. Oxley Jr. and Linda L. Oxley as trustees of the Oxley Family Trust dated June 10, 2005 ("**Assignee**"), with reference to the following facts:

RECITALS

A. City of Auburn, a Municipal Corporation, as Lessor, and Emery C. Oxley Jr. and Linda L. Oxley as Lessee, executed that certain Auburn Airport Industrial Park Industrial Site Lease ("**1992 Lease**") on January 1, 1992, pursuant to City Resolution #91-195, which 1992 Lease was amended on June 25, 2001 pursuant to City Resolutions #-1-71 and 01-72 (as amended, the "**Lease**"). By the terms of the Lease the Leased Premises were leased to Assignor as Lessee for a term of fifty (50) years, commencing on January 1, 1992, and ending on January 1, 2042.


B. Assignor now desires to assign the Lease to Assignees, and Assignees desire to accept the assignment thereof.

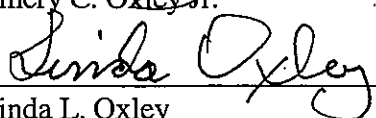
NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Assignor, Assignee and City agree as follows:

1. Effectiveness. This Assignment shall be effective as of the Effective Date.
2. Assignment, Assumption and Consent. Assignor hereby assigns and delegates to Assignee, and Assignee hereby accepts and assumes from Assignor, all of Assignor's rights and obligations as the "Lessee" under the Lease with respect to the Leased Premises and the improvements constructed thereon. Without limiting the foregoing, Assignee hereby agrees, for the benefit of Assignor and the City, to perform all of the obligations of the "Lessee" under Lease that relate to the Leased Premises and the improvements constructed thereon. The City hereby consents to the assignment and delegation by Assignor, and the acceptance and assumption by Assignee, of such rights and obligations.
3. Release of Assignor. The City hereby releases and discharges Assignor from any obligations of "Lessee" occurring on and after the Effective Date.
4. Entire Agreement. This Assignment, together with the Lease is the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written, between the parties with respect to the matters contained in this Assignment. Any waiver, modification, consent or acquiescence with respect to any provision of this Agreement shall be set forth in writing and duly executed by or in behalf of the party to be bound thereby. No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

5. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of California without giving effect to its conflicts of law principles.
6. Third Party Beneficiaries. No third party shall have any rights under this Assignment.
7. Subject to Lease. This Assignment is subject to all the terms, conditions and provisions of the Lease.


ASSIGNOR:

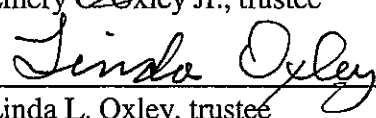


Emery C. Oxley Jr.


Linda L. Oxley

ASSIGNEE:



Emery C. Oxley Jr., trustee


Linda L. Oxley, trustee

CITY:

THE CITY OF AUBURN,
a municipal corporation

By: _____
Robert Richardson
City Manager

Attest:

Joseph J. R. LaBrie
City Clerk

Approved as to form:

Michael G. Colantuono
City Attorney

**CITY OF AUBURN
AUBURN MUNICIPAL AIRPORT

COMMERCIAL OFFICE LEASE**

BY AND BETWEEN

CITY OF AUBURN,
A MUNICIPAL CORPORATION
("CITY")

AND

EMERY C. OXLEY, JR. AND LINDA L. OXLEY, TRUSTEES
("TENANT")

**CITY OF AUBURN
COMMERCIAL OFFICE LEASE**

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**CITY OF AUBURN
AUBURN MUNICIPAL AIRPORT**

COMMERCIAL OFFICE LEASE

This Lease, made and entered into as of this __ day of _____, _____, by and between the City of Auburn, a Municipal Corporation (herein called "City"), and Emery C. Oxley, Jr. and Linda L. Oxley, trustees of the Oxley Family Trust dated June 10, 2005 (herein called "Tenant").

WITNESSETH

For, and in consideration of, the mutual covenants hereof, City hereby leases to Tenant and Tenant hereby hires from City the Premises as hereinafter described, upon the terms and conditions hereinafter set forth.

1. Premise.

The leased premises ("Premises") consist of 13615 New Airport Road, Auburn, CA particularly described and shown on **Exhibit A**, made part of this Lease. The Premises are a part of real property and improvements owned by City commonly known as the TGH Aviation Avionics Building and Gyro House, Auburn, California.

2. Use of Premises.

A. The Premises may be used for commercial office. Any uses shall be in conformance with (i) applicable zoning regulations of the City of Auburn, (ii) laws and rules imposed by any governmental agency, including, without limitation and if applicable, the Federal Aviation Administration, and (iii) Auburn Municipal Airport Minimum Operating Standards in effect at the Effective Date and as amended from time to time during the term of this Lease. Tenant hereby acknowledges that Tenant has read and understands the Auburn Municipal Airport Minimum Operating Standards as they presently exist, on file in the Office of City Clerk, and hereby covenants to conduct its operations in compliance with said rules, as may be amended from time to time. The failure of Tenant to abide fully with each of said rules shall be a material default under this Lease; provided, however, that Tenant may cure any such default within five (5) days after written notice by City to Tenant of such default. If the cure of such default is not, in the opinion of City, reasonably susceptible of cure within five (5) days, Tenant may cure such default within 20 days of written notice by City to Tenant of such default. Notwithstanding anything to the contrary, City's third written notice of a violation of said rules shall be an immediate and material default without right of Tenant to cure.

B. Tenant agrees that the use of the Premises, the development thereof and any construction thereon shall be in accordance with the applicable provisions of city codes and ordinances and any other state or federal law, code or regulation applicable to Tenant's use.

C. Tenant shall park automobiles only in designated spaces unless otherwise granted permission.

D. Tenant shall not use or allow any person to use the Premises that constitutes waste or nuisance, or that would unreasonably annoy other occupants and lessees of facilities and buildings of the Auburn Municipal Airport.

E. City reserves the right to maintain, develop and improve the Airport as it sees fit, regardless of the desires or views of Tenant, and without interference or hindrance from Tenant.

F. City reserves the right, but shall not be obligated to Tenant, to maintain and keep in repair the Airport and all publicly owned facilities of the Airport. City reserves the right to direct and control all activities of Tenant in this regard to include restriction of Tenants use of Airport facilities.

G. This Lease shall be subordinate to the provisions and requirements of any existing or future agreement between City and the United States relative to the development, operation or maintenance of the Airport.

H. There is hereby reserved to City, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises. This public right of flight shall include the right to cause within the said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operating on the Airport.

I. Tenant shall not make use of the Premises in any manner which might interfere with the taxiing, landing and taking off of aircraft from the Airport, or which might otherwise constitute a hazard. In the event the aforesaid covenant is breached, City reserves the right to enter upon the Premises and cause the abatement of such interference, at the expense of Tenant.

3. **[Reserved].**

4. **Term of Lease.**

The Term of this Lease shall be a period of ten (10) years commencing at 12:01 A.M. on _____ (the "Effective Date") and ending at 11:59 P.M. on _____, unless terminated earlier as provided in this Lease. If Tenant holds over and continues in possession of the Premises after termination of the term of this Lease, Tenant's continued occupancy of the Premises shall be deemed merely a tenancy from month-to-month at a minimum rental of 120% of the Fixed Rent set forth in Section 5.

5. **Fixed Rent.**

Except as provided herein, Tenant shall pay to City in lawful money of the United States of America, without deduction, offset or abatement at City's principal place of business, or at such place or places, or to such person or persons as may be designated from time to time by City, the following fixed rentals for the Premises:

A. A Fixed Rent of nine-hundred ninety-six dollars twenty-one cents (\$996.21) per month (the "Fixed Rent") payable on the fifteenth day of each and every month commencing on _____, and continuing through the term of this Lease. All rent shall be paid by Tenant to City, in advance, at 1225 Lincoln Way, Auburn, CA, 95603, or any other place or places that City

may from time to time designate by written notice given to Tenant. The Fixed Rent includes Tenant's portion of City's common area maintenance costs, taxes and insurance, and utilities.

B. If any Fixed Rent payment is not received by Landlord within five days after it is due, Tenant shall pay to Landlord a late charge of six (6%) percent of the past due amount as liquidated damages, in lieu of actual damages. The parties agree that this late charge represents a reasonable estimate of the expenses that Landlord will incur because of any late payment of Fixed Rent (other than interest and attorneys' fees and costs). Landlord's acceptance of any liquidated damages shall not constitute a waiver of Tenant's default with respect to the overdue amount or prevent Landlord from exercising any of the rights and remedies available to Landlord under this Lease. Tenant shall pay the late charge as additional rent with the next installment of rent.

6. Tenant Improvements.

No improvement, including landscaping, shall be erected or placed on the Premises and no alterations, including additional wiring, will be made in the improvements and facilities constructed without the prior written approval and receipt of applicable building permits of City. A copy of the City of Auburn building permit, issued for any improvements, shall be prominently displayed.

7. Compliance with Laws and Regulations.

A. Tenant shall, at Tenant's own cost and expense, obtain and maintain all licenses, permits, certificates or other authorizations of any governmental authority having jurisdiction thereover, including, but not limited to, the FAA, which may be necessary for the conduct of its business in the Premises. Without limiting the generality of the foregoing, Tenant shall comply with all applicable laws, resolutions, codes, rules, orders, directions, ordinances and regulations of any department, bureau or agency or any governmental authority having jurisdiction over the operations, occupancy, maintenance and use of the Premises for the purpose demised hereunder. Tenant shall indemnify and save City harmless from and against any claims, penalties, losses, damages or expenses imposed by reason of Tenant's violation of any applicable law or the rules and regulations of governmental authorities having jurisdiction thereof.

B. Tenant shall not omit or fail to do anything, or do or permit anything to be done on or about the Premises, or bring or keep anything on the Premises, or in any improvement or facility erected thereon, which will in any way conflict with any law, ordinance, rule or regulation which is now in force or which may hereafter be enacted or promulgated by any public authority having jurisdiction over the Premises.

C. Tenant shall not commit or suffer to be committed in or upon the Premises any other act or thing that may disturb any other tenant at the airport. It is understood that the normal operation of airplanes in the air, and to and from the Premises, is not considered a disturbance; provided that Tenant complies with all applicable laws, including, without limitation, FAA regulations, judicial orders and the City's rules and regulations as may be amended from time to time during the term of this Lease.

8. Use and/or Storage of Hazardous Material.

If it is necessary for Tenant or its contractors, licensees, employees, agents, customers or invitees to use Hazardous Material (as defined in Section 8.E) which will be generated, brought onto, used, stored or disposed of by Tenant, its agents, employees, contractors, subtenants or invitees, Tenant shall comply with the following provisions:

A. The use, storage and disposal of all such Hazardous Material shall be in strict compliance with applicable statutes, ordinances and regulations in effect during the term of this Lease that relate to public health and safety and the protection of the environment ("Environmental Laws"), including those Environmental Laws identified in Section 8.E.

B. If, during the Lease term (including any extensions), Tenant become aware of (i) any actual or threatened release of any Hazardous Material on, under or about the Premises or any buildings and facilities constructed thereon, or (ii) any inquiry, investigation, proceeding or claim by any governmental agency or other person regarding the presence of Hazardous Material on, under or about the Premises or any building or facility constructed thereon, Tenant shall give City written notice of the release or investigation within five days after learning of it and shall simultaneously furnish to City copies of any claims, notices of violation, reports, or other writings received or prepared by Tenant that concern the release or investigation.

C. Tenant shall, at Tenant's sole expense and with counsel reasonably acceptable to City, indemnify, defend and hold harmless City and City's employees, agents, elected officials, successors and assigns with respect to all losses arising out of or resulting from the release of any Hazardous Materials in or about the Premises or any building or facility constructed thereon, or the violation of any Environmental Law by Tenant or Tenant's agents, employees, contractors, customers or invitees. This indemnification applies whether or not the concentrations of any such Hazardous Material is material, the concentrations exceed state or federal maximum contaminant or action levels, or any governmental agency has issued a clean-up order. This indemnification includes: (i) losses attributable to diminution in the value of the Premises or any building or facility that may revert to City; (ii) loss or restriction of use of the Premises or any building or facility that may revert to the City; (iii) adverse effects on the marketing of the Premises or any building or facility that may revert to City; and (iv) all other liability, obligations, penalties, fines, claims, actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, orders, or judgments), damages (including consequential and punitive damages), and costs (including attorney, consultant and expert fees and expenses) resulting from the release or violation. This indemnification shall survive the expiration or termination of this Lease.

D. If the presence of any Hazardous Material brought onto the Premises or any building or facility constructed thereon, by Tenant or Tenant's employees, agents, contractors, customers or invitees results in contamination, Tenant shall promptly take all necessary actions to remove or remediate such Hazardous Materials, whether or not they are present at concentrations exceeding state or federal maximum concentration or action levels, or any governmental agency has issued a clean-up order, at Tenant's sole expense to return the Premises or any building or facility constructed thereon, to the condition that existed before the introduction of such Hazardous Material. Tenant shall first obtain City's approval of the proposed removal or remedial action. This provision does not limit the indemnification obligation set forth in Section 8.C.

E. As used in this Section 8, the term "Hazardous Material" shall mean any hazardous or toxic substance, material or waste at any concentration that is or becomes regulated by the United States, the State of California, or any local governmental authority having jurisdiction over the Premises or any building or facility constructed thereon. "Hazardous Material" includes, but is not limited to: (i) any "hazardous substance," as that term is defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA, 42 U.S.C. Sections 9601-9675); (ii) "hazardous waste," as that term is defined in the Resource Conservation and Recovery Act of 1976 (RCRA, 42 U.S.C. Sections 6901-6992k); (iii) any pollutant, contaminant or hazardous, dangerous or toxic chemical, material or substance, within the meaning of any other applicable federal, state or local law, regulation, ordinance or requirement (including consent decrees and administrative orders imposing liability or standards of conduct concerning any hazardous, dangerous or toxic waste, substance or material now or hereafter in effect); (iv) petroleum products; (v) radioactive material, including any source, special nuclear or by-product material as defined in 42 U.S.C. sections 2011-2097g-4); (vi) asbestos in any form or condition; and (vii) polychlorinated biphenyls ("PCBs") and substances or compounds containing PCBs.

F. City shall have the right, at any time, at its expense, to cause testing wells to be installed on or about the Premises and/or the Airport, and may, at its option, cause the ground water, soil and air to be tested to detect the presence of hazardous materials or toxic substances during the term of the Lease by the use of such tests as are then customarily used for such purposes. If Tenant so requests, City shall supply Tenant with copies of such test results. Should the tenant be responsible for the presence of hazardous materials or toxic substances, the cost of such tests and of the maintenance, repair and replacement of such wells shall be fully paid for by Tenant within 30 days after receiving a statement of charges from City.

G. City and City's agents shall have the right, with prior notice, to inspect the Premises for the purposes of ascertaining Tenant's compliance with this section. The cost of such inspections shall be reimbursed to City by Tenant.

H. Any increase in the premium for insurance carried by City or required of Tenant under this Lease on the Premises or the Airport which arises from Tenant's use and/or storage of these materials shall be solely at Tenant's expense. Tenant shall procure and maintain at its sole expense such additional insurance as may be necessary to comply with any requirement of any federal, state or local governmental agency or special district with jurisdiction.

9. Maintenance and Repairs.

A. Tenant acknowledges the Premises are in good order and repair unless otherwise indicated herein. Tenant shall at his own expense and at all times maintain the Premises and any improvements or equipment thereon in good and safe condition and repair including window glass, electrical wiring to premises, interior lighting, carpeting & floor coverings, entry doors and interior walls. If, after 30 days' notice from the City, Tenant fails to maintain or repair any part of the Premises or any improvements or equipment thereon, City may, but shall not be obligated to, enter upon the Premises and perform such maintenance or repair, and Tenant agrees to pay the costs thereof to City upon demand plus a percentage of costs incurred to sufficiently reimburse City for all overhead, fees and other costs and expenses, including attorneys' fees, arising from City's involvement with such repairs, and interest at the legal rate until paid in full.

B. City shall be responsible for repairs and maintenance of roof, exterior walls, structural foundations, plumbing and heating and air-conditioning systems.

10. Abandonment.

Tenant shall not abandon, as defined under California law, the Premises at any time during the term hereof, and if Tenant shall abandon, vacate or otherwise cease operating, any fixtures and personal property belonging to Tenant and left upon the Premises and any or all of Tenant's improvements and facilities thereon, shall, at the option of City, become the property of City.

11. Liens.

A. Tenant shall keep the Premises and all improvements thereon free from any and all liens arising out of any work performed, materials furnished or obligation incurred by Tenant, Tenant's employees, agents and contractors. City has the right at all times to post and keep posted on the Premises and any building or facility built thereon, any notice it considers necessary for protection from such liens. At least seven days before beginning construction of any improvements or alteration to any improvements on the Premises, Tenant shall give City written notice of the expected commencement date of that construction to permit City to post and record a notice of nonresponsibility. Tenant agrees to save City harmless from any liens and to pay City upon demand the cost of discharging such liens with interest at the then existing legal rate per annum from the date of discharge, together with reasonable attorneys' fees in connection with the settlement, trial or appeal of any such lien matter.

B. In the event Tenant shall fail to pay and discharge or cause to be paid and discharged, when due and payable, any tax, assessment or other charge upon or in connection with the Premises, or any lien or claim for labor or material employed or used or any claim for damages arising out of the construction, repair, restoration, replacement, maintenance and use of the Premises and any improvements thereon, or any judgment on any contested lien or claim, or any insurance premium or expense in connection with the Premises and improvements, or any other claim, charge or demand which Tenant has agreed to pay or cause to be paid under the terms of this Lease, and if Tenant, after 10 days' written notice from City to do so shall fail to pay and discharge the same, or in the event Tenant contests such tax, assessment, claim or charge and fails to post security as provided in Section 12, then City may, at his option, pay any such tax, assessment, insurance expense, lien, claim, charge or demand, or settle or discharge any action therefor, or judgment thereon, and all costs, expenses and other sums incurred or paid by City in connection with any of the foregoing shall be paid by Tenant to City upon demand, together with interest thereon at the legal rate from the date incurred or paid. Any default in such repayment by Tenant shall constitute a breach of the covenants and conditions of this Lease.

12. Taxes.

In accordance with California Revenue and Taxation Code Section 107.6(a), City states that entering into this Lease may create a possessory interest subject to property taxes. During the original term and any additional term of this Lease, Tenant or any other party in whom the possessory interest is vested shall pay prior to delinquency any taxes upon the assessed value of the entire Premises, not merely the assessed value of Tenant's estate. In addition, Tenant hereby agrees to pay or cause to be paid prior to delinquency any taxes, including possessory interest, and any assessments levied or assessed:

A. On the Premises, whether a direct levy or indirect through City and any tax in lieu of property tax;

B. On all possessory interests hereunder or in the Premises;

C. On any improvements, fixtures and equipment now or hereafter existing on the Premises and on any personal property situated in, on or about any building or improvements thereon; and

D. If at any time during the term of this Lease a tax or excise is levied on rents, Tenant shall pay the same. Also, if at any time during the term of this Lease any tax, however described, is levied or assessed against City as a substitute, in whole or in part, for any real property taxes, or in addition to such real property taxes, Tenant shall pay before delinquency the substitute or additional tax or excise. Such substitutes include, but are not limited to, any possessory interest tax imposed on Tenant by California Revenue and Taxation Code Sections 103 and 107. Tenant hereby expressly acknowledges that City has given Tenant notice that Tenant's possessory interest in the demised premises may be taxed.

E. In the event Tenant fails to pay such taxes or assessments, City may, at its option, after giving 10 days' notice to Tenant, pay any such taxes or assessments together with all penalties and interest which may have been added thereto by reason of any such delinquency or failure to pay, and may likewise redeem the Premises or any part thereof, or the buildings or improvements located thereon, from any tax sale or sales. Any such amounts so paid by City shall become immediately due and payable as additional rent by Tenant to City, together with interest thereon at the maximum lawful rate from the date of payment by City until paid by Tenant. Any such payment shall not be deemed to be a waiver of any other rights of City hereunder. Tenant may, in good faith, contest any such tax or assessment at its expense. However, Tenant shall defend itself and City against the same and shall pay and satisfy any judgment including all penalties and interest that may be rendered thereon. City may require Tenant to furnish City a surety bond or other security reasonably satisfactory to City in an amount equal to such contested tax or assessment, indemnifying City against liability for such tax or assessment and holding the Premises free from the effect of such tax or assessment. City shall cooperate with Tenant in any such contest and shall execute any necessary legal documents incident thereto, but shall be held harmless by Tenant against all costs or expenses incident to such cooperation. Current taxes shall be prorated as of the Effective Date.

13. Utilities, Trash & Refuse.

A. Utility services to the Premises shall be paid by City. City is not, and will not, be liable for any loss, damage or inconvenience to the Tenant by reason of shortage, insufficiency, suspension or discontinuance of electrical service or water service or the increase or decrease of water pressure.

B. It is agreed that the quick, efficient collection and disposal of trash, clippings and refuse from the Premises shall be at Tenant's own expense in accordance with applicable laws and ordinances.

C. Tenant shall not allow clippings, trimmings, cans, cartons, barrels, used equipment, scrap or other debris to collect in any way on or about the Premises; provided, however, that same may be stored in a suitably screened and protected enclosure pending collection and removal as long

as such storage does not generate odors, attract rodents or insects or become offensive in any manner.

d. Tenant shall prevent the entrance of petroleum products and other deleterious wastes into the sewage and storm water drainage systems serving the airport. Discharge of industrial waste and Hazardous Materials is prohibited. For discharge of anything other than domestic waste, Tenant must obtain permission or permits from Placer County Department of Public Works, Special District Division, or any other governmental unit or agency having jurisdiction over the discharge of wastes other than domestic waste, including, without limitation, Hazardous Materials.

14. Indemnification.

City shall not be liable to Tenant or any other person whomsoever for death or personal injury or for loss or destruction of, or damage to, property in, on or about the Premises and any improvement thereon, and upon the Effective Date of the Lease, Tenant shall, for the full term of this Lease, indemnify and save harmless City and its officers, agents and employees from and defend the same against any and all claims, liens, liability, expense (including attorneys' fees), losses and judgments arising from death or personal injuries or from the loss or destruction of, or damage to, property of any person whomsoever resulting from the acts, omissions or negligence of Tenant, Tenant's officers, agents, contractors, permittees or employees with respect to use of or Tenant's obligation to maintain the Premises and any improvements thereon.

15. Insurance.

A. Tenant shall obtain insurance coverage beginning on the Effective Date and continuing through the entire Lease term. The acceptable insurance shall be at least as broad as:
(i) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001);
(ii) property insurance against all risks of loss to any tenant improvements or betterments; and

B. Tenant shall maintain limits no less than general liability \$1 million per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separate to this Lease or the general aggregate limit shall be twice the required occurrence limit.

C. Any deductibles or self-insured retention must be declared to and approved by City. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the City, its officers, officials, employees and volunteers; or Tenant shall provide a financial guaranty satisfactory to City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. The general liability policy is to contain, or be endorsed to contain, the following provisions:

(1) City, its officers, officials, employees and volunteers are to be covered as insured with respect to liability arising out of ownership, maintenance or use of that part of the Premises leased to Tenant.

(2) Tenant's insurance coverage shall be primary insurance as respects City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by City,

its officers, officials, employees or volunteers shall be excess of Tenant's insurance and shall not contribute with it.

(3) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled except after 30 days' prior written notice by mail, or after 10 days prior written notice by mail if cancellation is due to non-payment of premium, has been given to City.

E. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII.

F. Tenant shall furnish City with original certificates and amendatory endorsements effecting coverage required by this Section 16. All certificates and endorsements are to be received and approved by City before any work or improvements or alterations to the Premises commence. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

16. Inspection of Premises and Improvements.

Tenant shall permit the respective agents, employees or appointees of City to enter in and upon the Premises and all improvements thereon at all reasonable times for the purpose of inspecting the same.

17. Events of Default by Tenant.

Each of the following events shall constitute "an event of default of Tenant":

A. Tenant's failure to pay the rent herein fixed for the payment hereof;

B. Tenant's failure to pay any taxes, including possessory interest taxes or assessments agreed to be paid by Tenant in Section 12 of this Lease in accordance with the terms of said section;

C. Tenant attempt to make or allow to be made any subleasing, encumbrance, assignment or other transfer of the leased premises.

D. The failure of Tenant to abide by the terms, covenants or conditions as specified in Section 2.A.

E. Breach of Federal Requirements as specified in Section 29.

F. Tenant's failure, after 60 days' written notice from City, to keep, perform or observe any other term, covenant or condition of this Lease to be kept, performed or observed by Tenant;

G. Tenant's filing of a voluntary petition in bankruptcy, or the assignment of all, or substantially all, of Tenant's assets for the benefit of Tenant's creditors or the institution of proceedings in bankruptcy against Tenant or the appointment of a receiver of the assets of Tenant; provided, however, that if such proceedings or appointments are involuntary, then they shall not be considered an "event of default

by Tenant," unless Tenant fails to procure a dismissal thereof within 60 days after the institution of such involuntary bankruptcy proceedings or the appointment of such receiver.

18. Results of Tenant's Default.

Upon the occurrence of an "event of default of Tenant," and after 60 days' written notice from City, City, besides any other rights or remedies it may have, shall have as only allowed by law the immediate right of re-entry and may remove all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of, Tenant. Should City elect to re-enter as herein provided, or should it take possession pursuant to any notice provided for by law, it may either terminate this Lease, relet the Premises and any improvements thereon or any part thereof for such term or terms (which may be for a term extending beyond the term of this Lease) and at such rental or rentals and upon such other terms and conditions as City, in its sole discretion, may deem advisable, with the right to make alterations and repairs to said Premises and improvements. Upon such reletting:

A. Tenant shall be immediately liable to pay to City, in addition to any indebtedness other than rent due hereunder, the cost and expenses of such reletting of such alterations and repairs incurred by City, and the amount, if any, by which the rent reserved in this Lease for the period of such reletting (up to, but not beyond the term of this Lease) exceeds the amount agreed to be paid as rent for the Premises for the period of such reletting; or

B. At the option of City, rents received by City from such reletting shall be applied: first, to the payment of any indebtedness other than rent due hereunder from Tenant to City; second, to the payment of any costs and expense of such reletting and of such alterations and repairs; third, to the payment of rent due and unpaid hereunder, and the residue, if any, shall be held by City and applied in payment of future rent as the same may become due and payable hereunder.

C. If Tenant has been credited with any rent to be received by such reletting upon Section 20.A, and such rent shall not be promptly paid to City by the new tenant, or if such rentals received from such reletting under Section 20.A during any month be less than that to be paid during that month by Tenant hereunder, Tenant shall pay any such deficiency to City. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of the Premises and any improvements thereon by City shall be construed as an election on its part to terminate this Lease unless a written notice of such intention be given to Tenant. Notwithstanding any such reletting without termination, City may, at any time thereafter, elect to terminate this Lease for such previous breach. Should City at any time terminate this Lease for any breach, City may, upon 60 days' written notice thereof, take title to Tenant's interest in any and all buildings and improvements on the Premises. The City may, at its option, extend said 60-day notice period for additional periods for purposes of possible settlement of any breach. City may recover from Tenant all damages it may incur by reason of such breach, including the cost of recovering the Premises and including the worth at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Lease for the remainder of the stated term, all of which amounts shall be immediately due and payable from Tenant to City.

19. Nonwaiver of Defaults.

The waiver by City of any breach by Tenant of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any other term, covenant or condition of this Lease. No term, covenant or condition hereof can be waived except by the written consent of City and forbearance or indulgence by City, in any regard whatsoever, shall not constitute a waiver of the terms, covenants or conditions to be performed by Tenant to which the same may

apply, and until complete performance by Tenant of the term, covenant or condition, City shall be entitled to revoke any remedy available to it hereunder or by law, despite such forbearance or indulgence.

20. Subordination for Benefit of City.

If City desires this Lease to be subordinated to any mortgage, deed of trust or other encumbrance ("Fee Mortgage") now or hereafter placed upon the Premises by City, and all advances, whether obligatory or optional made on the security thereof, and to all renewals, modifications, consolidations, replacements and extensions thereof, this Lease, at City's election, shall be subordinate to any such Fee Mortgage provided City first obtains from the lender a written agreement that provides substantially as follows: As long as Tenant performs its obligations under this Lease, no foreclosure of, deed given in lieu of foreclosure of, or sale under the encumbrance, and no steps or procedures taken under the encumbrance, shall affect Tenant's rights under this Lease.

Subject to the foregoing, Tenant agrees to execute any documents required to effectuate such subordination, and failing to do so within 10 days after City's written request to Tenant therefore, does hereby irrevocably appoint City as Tenant's attorney-in-fact in Tenant's name to do so.

21. Tenant's Encumbrance.

Tenant may not encumber Tenant's interest in the Premises or in any improvements Tenant places thereon by mortgage, deed of trust or other instrument.

22. Rights Upon Termination.

If Tenant is not in default hereunder, Tenant shall have the right to remove only the trade fixtures which Tenant may have placed or installed upon the Premises during the term of the Lease; provided, however, that upon said removal, Tenant shall repair, at Tenant's own expense, any damage resulting therefrom. The term "trade fixtures" means those improvements, other than structures or structural modifications installed by Tenant, used for the conducting of Tenant's business and which can be removed without interference or damage to structures.

23. Subletting/Assignment.

A. Except as provided in Section 21 of this Lease entitled "Tenant's Encumbrance," Tenant may not sublease or assign all or any portion of the Premises or the Improvements constructed or installed on the Premises without the prior written consent of City, which consent shall not be unreasonably withheld. Any such sublease shall provide (i) such subleasing shall be subject to the terms of this Lease, (ii) such subleasing shall comply with all applicable statutes and regulations, (iii) all building improvements and alterations constructed on the Premises shall have been approved by City pursuant to Section 6 of this Lease, (iv) Tenant shall remain liable under this Lease; and (v) each sublease shall contain a provision satisfactory to City requiring the subtenant, if City shall so demand, to attorn to City if Tenant defaults under this Lease, and if the subtenant is notified of Tenant's default and instructed to make subtenant's rental payments to City, but City shall have no obligation to recognize the subtenant or to allow any subtenant to remain in possession upon the default of Tenant.

B. City's consent to an assignment of Tenant's interest in this Lease shall be conditioned upon (i) execution by Tenant and its assignee (the "Assignee") of an assignment and assumption agreement in form satisfactory to City, and (ii) payment by Tenant or Assignee of all state, local and any other excise, transfer or documentary taxes imposed, if any, as a result of the execution of such assignment.

C. If Tenant is a corporation or a partnership, any change in Tenant which would be a "change in ownership" pursuant to California Revenue and Taxation Code Sections 60, et seq., shall be deemed an assignment subject to City's consent. It shall not be unreasonable for City to withhold or condition its consent based on the prospective assignee's financial strength, experience in operating the type of business permitted, credit history or any other factor which City reasonably believes germane to a tenant's ability and willingness to perform the obligations of this Lease. No such assignment shall release Tenant of further liability under this Lease.

D. A fee will be charged by City for processing or approval of any sublease or assignment requested by Tenant including any and all administrative, legal and other costs reasonably incurred by City. The minimum charge by City for the review, processing or approval of such request shall be \$200.00.

24. Effect of Failure to Comply.

No encumbrance, assignment or other transfer, whether voluntary, involuntary, by operation of law, under legal process, through a receivership, bankruptcy or otherwise, shall be valid or effective without the prior written consent and approval of City. If Tenant attempts to make or allow to be made any subleasing, encumbrance, assignment or other transfer then any of the foregoing events shall be deemed a breach of the conditions and restrictions of this Lease, and upon such breach, City may, at its option, terminate this Lease at once by written notice, and upon such termination this Lease shall end and be of no further force.

25. Condemnation.

If, during the term of this Lease there is a taking, or transfer of, or damage to all or any part of the Premises (Premises as used herein shall include all appurtenant interests such as access rights) for a public use by any individual or entity, public or private, possessing the power of eminent domain, whether by condemnation proceedings or otherwise (hereinafter referred to as "appropriation"), the rights and obligations of City and Tenant with regard to such appropriation shall be governed by the provisions of this article.

A. The date of taking, as used in this article, is defined as the earliest of the following dates: (i) the date legal possession is taken, which is defined as the date, if any is established, after which the condemnor may take possession of the property as stated in an order authorizing the condemnor to take possession; (ii) the date a final order of condemnation or final judgment is filed or recorded or the date a deed is recorded in the event of a voluntary sale; and (iii) the date physical possession of the property is taken.

B. Total taking means an appropriation of the entire Premises or so much thereof as to prevent or substantially impair the conduct of Tenant's business unless Tenant elects to continue the Lease in effect. If during the term of this Lease there is an appropriation of the Premises which amounts to a total taking as herein defined, then the leasehold estate of Tenant in and to the Premises shall cease and terminate as of the date of such taking, and all rentals and other charges

payable by Tenant to City hereunder and attributable to the Premises shall be paid up to the date of such taking.

C. The term "partial taking" shall mean the taking of a portion only of the Premises which does not constitute a total taking as defined above. If during the term of this Lease there shall be a partial taking of the Premises, this Lease shall terminate as to the portion of the Premises so taken at the date of taking as herein defined, but said Lease shall continue in force and effect as to the remainder of the Premises. The rental payable hereunder by Tenant shall, as of the date of taking, be adjusted so that Tenant shall be required to pay for the remainder of the term only such portion of such rent as the value of the part of the Premises remaining after the taking bears to the value of the entire Premises at the date of taking.

D. In the event the condemning agency shall abandon an eminent domain proceeding, either party hereto shall have the right to contest the condemnor's abandonment and a right to its respective costs and disbursements as defined and provided for in California law. If after the condemnor takes possession or the Tenant moves from the property sought to be condemned in compliance with an order of possession, the condemnor abandons the proceeding as to such property or a portion thereof, or if it is determined that the condemnor does not have authority to take such property or portion thereof by eminent domain and the condemnor is required by law to deliver possession of such property or such portion thereof to the party entitled to the possession thereof and pay damages as provided for in California law, then Tenant shall receive the award for costs and damages incurred by reason of Tenant being removed from possession of the Premises, but Tenant shall be entitled to retake possession of the Premises and, in the event of such repossession by Tenant, all of the terms of this Lease shall remain in operation and effect.

E. All compensation and damages awarded for the taking of the Premises or any portion thereof shall, except as otherwise herein provided, belong to and be the sole property of City. However, any award that may be made for the taking of or injury to the improvements, and all other improvements constructed by Tenant on the Premises shall be equitably apportioned between Tenant and City if, at the time of the taking, the expected useful life of the improvements extends beyond the Termination Date provided for in Section 4. Otherwise, Tenant shall be entitled to such award. Tenant shall be entitled to any award for damage to Tenant's business or on account of any cost or loss Tenant may sustain in the removal of Tenant's fixtures, equipment and furnishings, or as a result of any alterations, modifications or repairs which may be reasonably required by Tenant in order to place the remaining portion of the Premises not so condemned in a suitable condition for the continuance of Tenant's tenancy. Tenant shall also be entitled to that portion of any award that may be attributable to any severance damages to the remaining leasehold interest and to any improvements constructed by Tenant.

F. Each party shall bear his own costs, attorneys' fees, appraiser's fees and all other costs in connection with any matter contained in this article, except as may be otherwise provided.

G. Neither party hereto shall grant a right of entry to any condemnor without the written consent of the other party hereto.

26. Right to Amend.

In the event the Federal Aviation Administration requires modifications or changes in this Lease as a condition precedent to the granting of funds for the improvement of the airport, Tenant

agrees to consent to such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions or requirements of this Lease as may be reasonably required to obtain such funds; provided, however, that in no event will Tenant be required, pursuant to this paragraph, to agree to an increase in the rentals provided for in this Lease or to a change in the use (provided such use is an authorized use hereunder) to which Tenant has put the Premises or to change which would substantially affect the rights of a mortgagee, beneficiary, payee or trustee registered with City and Corporation as provided in Section 23.

27. Compliance with Federal Requirements.

A. If applicable, Tenant, for itself, its heirs, personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained or otherwise operated on the said property described in this Lease for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, Tenant shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to (i) Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, or as said Regulations may be amended; (ii) Title 14, Code of Federal Regulations, Part 152, Subpart E, or as said Regulations may be amended; (iii) Part 77 of the Federal Aviation Regulations, or as said Regulations may be amended; and (iv) any and all federal laws, rules or regulations relating to the operations of Tenant on the Premises.

B. Tenant, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land: (i) that no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of or be otherwise subjected to discrimination in the use of said facilities; (ii) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of or otherwise be subject to discrimination; and (iii) that Tenant shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

C. That in the event of breach of any of the above nondiscrimination covenants, Landlord shall have the right to terminate the Lease and to reenter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued. This provision does not become effective until the procedures of Title 49, Code of Federal Regulations, Part 21, are followed and completed, including expiration of appeal rights.

D. Tenant shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided, that Tenant may be allowed to make

reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

E. Noncompliance with Section 29.D above shall constitute a material breach thereof and, in the event of such noncompliance, Landlord shall have the right to terminate this Lease and the estate hereby created without liability therefor or at the election of Landlord or the United States either or both said Governments shall have the right to judicially enforce provisions.

F. Tenant agrees that it shall insert Sections 29.A through 29.E in any lease agreement by which said Tenant grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the Premises herein leased.

G. Tenant agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Premises.

H. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 U.S.C. Section 1349a).

I. This Lease and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said Airport or the exclusive or nonexclusive use of the Airport by the United States of America during the time of war or national emergency.

28. Estoppel Certificates.

City and Tenant shall, respectively, at any time and from time to time upon not less than 10 days' prior written request by the other, deliver to the requesting party an executed and acknowledged statement in writing certifying:

A. That this Lease is unmodified and in full force and effect (or if there has been any modification(s) thereof that the same is in full force and effect as modified, and stating the nature of the modification or modifications);

B. That to its knowledge the requesting party is not in default under this Lease (or if any such default exists, the specific nature and extent thereof), and

C. The date to which rent and other charges have been paid in advance, if any. Each certificate delivered pursuant to this section may be relied on by any prospective purchaser or transferee of the Premises or of City's or Tenant's interest hereunder or by any fee mortgagee of the Premises or of City's or Tenant's interest hereunder or by any assignee of any such mortgagee.

D. A fee will be charged by City for processing or approval of any estoppel certificate requested by Tenant including any and all administrative, legal and other costs reasonably incurred by City. The minimum charge by City for the review, processing or approval of such request shall be \$200.00.

29. Mediation/Arbitration.

All claims, disputes and controversies arising out of or in relation to the performance, interpretation, application or enforcement of this Lease, including, but not limited to, breach thereof ("Mediation/Arbitration Dispute"), except (a) the payment of rent, which Tenant acknowledges is an independent covenant not subject to offset or deduction, and (b) the matters described in Section 31.B (4), shall be decided under this Section 31 pursuant to mediation, and if necessary, arbitration. If Tenant defaults in the payment of rent; this Section 31 shall not apply and City may pursue any and all legal and equitable remedies provided by law, including, without limitation, an unlawful detainer action, writ of possession, and a money judgment for unpaid rent.

A. Mediation.

(1) Any Mediation/Arbitration Dispute shall be referred to mediation before, and as a condition precedent to, the initiation of any arbitration proceeding.

(2) The parties shall submit any Mediation/Arbitration Dispute to an impartial neutral mediator selected by mutual consent of the parties. In the event the parties cannot agree on the selection of a mediator, the Mediation/Arbitration Dispute shall be referred to JAMS/Endispute, a professional mediation service. The parties shall equally bear the cost of mediation fees, subject only to the exception set forth in the next paragraph.

(3) If during the mediation a party ("offering party") makes a written offer of compromise to another party which is not accepted by such party ("refusing party") and the refusing party fails to obtain a more favorable result through arbitration, the refusing party shall pay the offering party all costs and expenses, including reasonable attorney fees and the cost of the mediator and arbitrator, incurred from the time the offer is refused.

B. Arbitration.

(1) A Mediation/Arbitration Dispute which is not resolved through mediation, as set forth above, shall be decided by neutral, binding arbitration and not by administrative proceeding or court action, except as provided by California law for judicial review of arbitration proceedings. The arbitration shall be conducted in accordance with the rules governing the conduct of arbitration proceedings set forth in the California Code of Civil Procedure and the California Rules of Court. The parties may agree in writing to use different rules. The parties shall have the right to discovery in accordance with the provisions of the California Code of Civil Procedure. Judgment on any award of the arbitrator may be confirmed and entered by the court as provided for by California law.

(2) An arbitrator may be selected by mutual consent of the parties. If the parties cannot agree on selection of an arbitrator within 15 days from the date either party first requests arbitration, an arbitrator familiar with handling similar disputes shall be appointed by JAMS/Endispute. The cost of the arbitrator, arbitration costs and attorney fees shall be borne by the parties as may be determined by the arbitrator.

(3) Any demand for arbitration must be made in writing to the other party. No demand for arbitration may be made after the date on which the institution of legal proceedings based on the claim is barred by the applicable statute of limitations.

(4) The parties shall each have the right to file with a court of competent jurisdiction an application for temporary or preliminary injunctive relief, writ of attachment, writ of possession, temporary protective order, or appointment of a receiver if the arbitration award to which the applicant may be entitled may be rendered ineffectual in the absence of such relief or if there is no other adequate remedy. This application shall not waive a party's arbitration rights under this Lease.

(5) The arbitrator shall have the power to grant legal and equitable remedies, and award damages, that may be granted or awarded by a judge of the Superior Court of the State of California or the Federal District Court of the Eastern District of California. The arbitrator shall prepare and provide to the parties a written decision on all matters subject to the arbitration, including factual findings and the reasons that form the basis of the arbitrator's decision. The arbitrator shall not have the power to commit errors of law or legal reasoning and the award of the arbitrator shall be vacated or corrected for any such error or any other grounds specified in Code of Civil Procedure Section 1286.2 or Section 1286.6. The award of the arbitrator shall be mailed to the parties no later than 30 days after the close of the arbitration hearing. The provisions of the California Evidence Code shall apply to the arbitration hearing. The arbitration proceedings may be recorded by a certified shorthand court reporter. The party requesting a reporter shall pay for the reporter and if both sides request a reporter, the cost of the reporter shall be divided equally. Written transcripts of the proceedings may be prepared at the request of a party. A party requesting a transcript shall pay for the cost thereof.

30. Consent Not to be Unreasonably Withheld.

Whenever the consent, approval or permission is required hereunder by either Tenant or City, such consent, approval or permission is not to be unreasonably withheld.

31. Use of Airport.

The Tenant, in the operations and use of the Auburn Municipal Airport, will not on the grounds of race, color or national origin discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 15 of the Federal Regulations. The City of Auburn is granted the right to take such action as the United States government may direct to enforce such covenant.

32. Relationship Between the Parties.

City is neither a joint venturer with nor a partner or association of Tenant with respect to any matter provided for in this Lease. Nothing herein contained shall be construed to create any such relationship between the parties or to subject City to any obligation of Tenant hereunder.

33. Time of the Essence.

Time is of the essence of this Lease.

34. Lease Made in California.

This Lease has been made and shall be construed in accordance with the laws of the State of California. All duties, obligations and liabilities of City and Tenant with respect to the Premises are expressly set forth herein and this Lease can only be amended in writing.

35. Headings.

The headings contained herein are for convenience of reference and are not intended to define or limit the scope of any provisions of this Lease.

36. Notices.

All notices to be given hereunder shall be in writing and shall be deemed given when received in the United States mail, postage prepaid, certified or registered, addressed as follows, or to such other address as from time to time may be designated by a party by written notice to the other parties:

A. City of Auburn
Office of City Manager
1225 Lincoln Way
Auburn, CA 95603

B. "Tenant"
Emery C. Oxley, Jr. and Linda J. Oxley
Trustees of the Oxley Family Trust
13615 New Airport Road
Auburn, CA 95603

37. Surrender and Merger.

The voluntary or other surrender or termination of this Lease by Tenant or a mutual cancellation thereof shall not work a merger and shall, at the option of City, terminate all or any existing subleases or subtenancies or may, at the option of City, operate as an assignment to City of all such subleases or subtenancies.

38. Successors and Assigns.

Subject to the terms and conditions of Section 25 hereof, the provisions of this Lease shall bind and inure to the benefit of the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

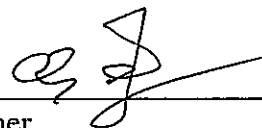
"CITY"

CITY OF AUBURN, CALIFORNIA, a
Municipal Corporation

By: _____
Robert Richardson
City Manager

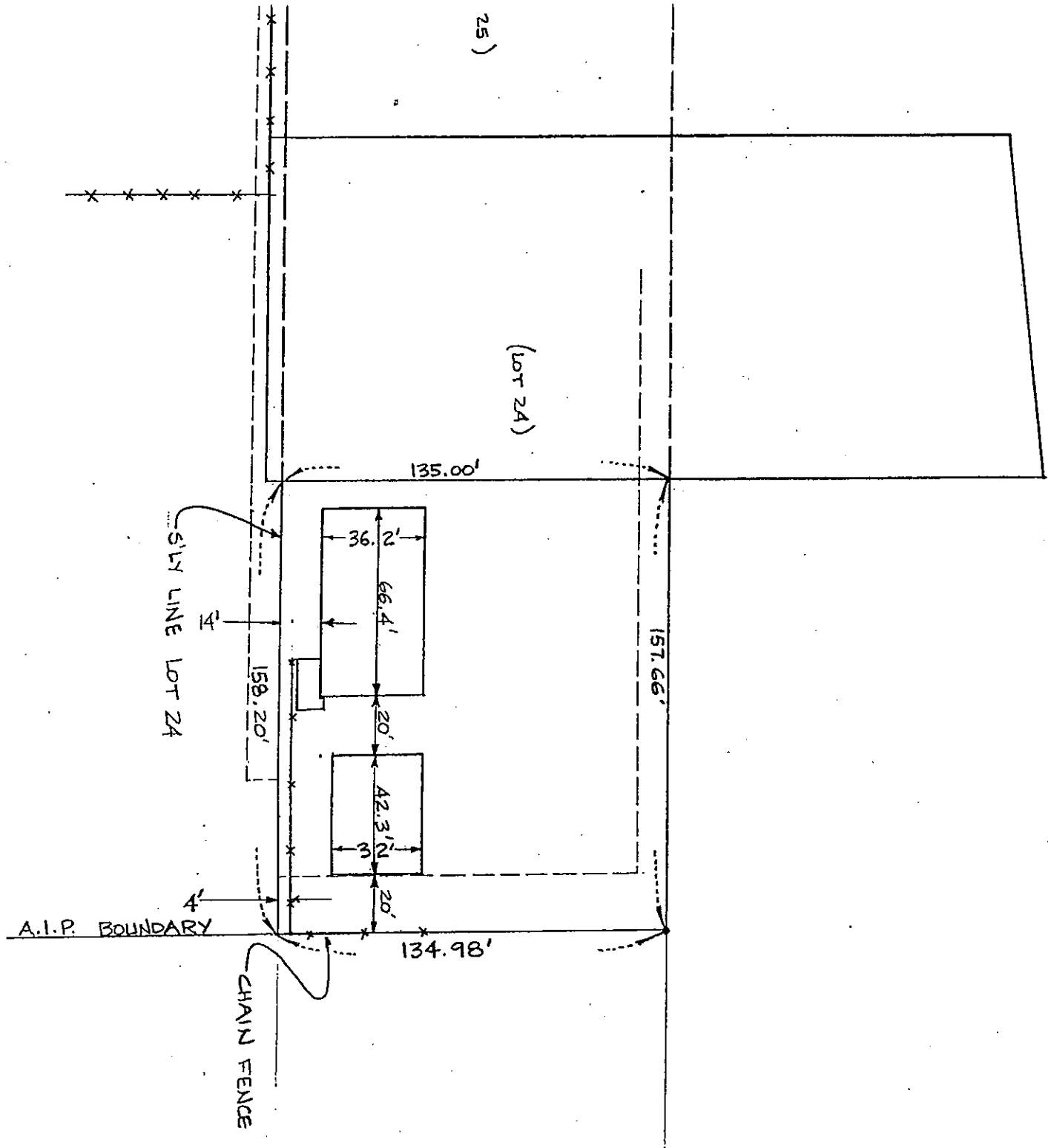
"TENANT"

Emery C. Oxley, Jr., Trustee of the Oxley
Family Trust

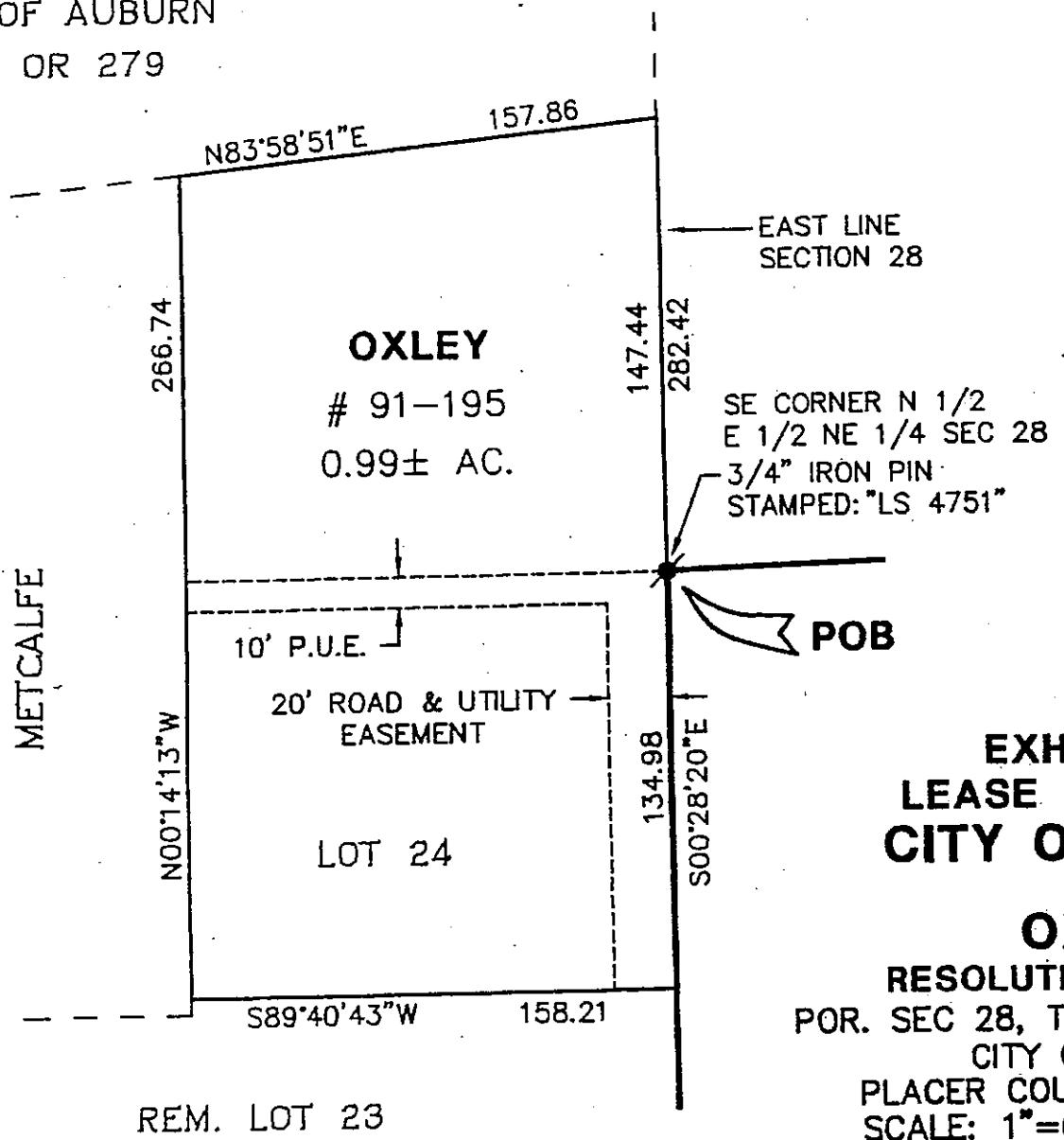
By:  _____
Its: Owner
Name: Emery C. Oxley, Jr.

APPROVED AS TO FORM:

Michael Colantuono, City Attorney



CITY OF AUBURN
496 OR 279



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